



SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO MINUTES

REMOTE REGULAR MEETING

January 6, 2020 - 4:00 PM

Regular Remote Meeting

Seat 1	Dean Schmidt	Seat 7	Vacant
Seat 2	Lila LaHood	Seat 8	Vacant
Seat 3	Vacant	Seat 9	Chris Hyland
Seat 4	Vacant	Seat 10	Matthew Yankee - Vice Chair
Seat 5	Jennifer Wong	Seat 11	Fiona Hinze
Seat 6	Bruce Wolfe - Chair		

Ex-officio (*non-voting*) Clerk of the Board of Supervisors or his or her designee

Ex-officio (*non-voting*) Mayor or his or her designee

1. **CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES. Shall SOTF waive Complaint Procedure Rules to allow more than two complaints to be heard in the same meeting by the same complainant?**

Chair Wolfe called the meeting to order at 4:05 PM. On the call of the roll Chair B. Wolfe and Members LaHood, Schmidt, Wong, Hyland, Yankee and Hinze were noted present. A quorum was present.

Chair Wolfe opened the discussion stating that a specific item was not included in the Agenda and asked for everyone's availability for a special meeting to hear that item. The SOTF decided to meet on Tuesday, January 12, 2021, at 6:30 pm to address the missing item.

Chair Wolfe noted that there were more than two items on the agenda from the same requestor and per the SOTF policy and asked that the Committee waive the Complaint Procedures.

Action: Moved by Member LaHood, seconded by Member Hinze, to allow more than two items be heard at the same meeting.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 - LaHood, Hinze, Schmidt, Wong, Hyland, Yankee, Wolfe

Noes: 0 - None

Chair Wolfe noted that a Respondent requested that Item No. 9, File No. 19121 be moved to the top of the agenda as Item 4 and thereby moving the remainder of the items down.

Action: Moved by Member Hinze, seconded by Member Yankee to adjust the Agenda and requested that Item No. 9, File No. 19121 be moved to the top of the agenda as Item No. 4 and thereby moving the remainder of the items down and that Public Comment be taken immediately following.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 7 - Hinze, Yankee, LaHood, Schmidt, Wong, Hyland, Wolfe

Noes: 0 - None

2. **Approval of minutes from the Sunshine Ordinance Task Force December 2, 2020, meeting.**

The SOTF discussed the draft meeting minutes.

Action: Moved by Member Yankee, seconded by Member Wong, to approve the December 2, 2020, meeting minutes and to reflect the requested changes.

Public Comment:

Anonymous No. 2 stated a correction to the December 2020 SOTF minutes about the updates to the November 2020 SOTF meeting minutes about the Supervisor of Records annual report being false.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Wong, Hyland, Schmidt, LaHood, Hinze, Wolfe

Noes: 0 - None

3. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda.

John Hooper provided an update on the status of File Nos. 19061 and 19062 which were referred back to the Compliance and Amendments Committee with instructions that a list of missing records be sent to OEWD and Public Works. Mr. Hooper stated that the SOTF Clerk sent the list to both Public Works and OEWD. Mr. Hooper stated that he

has not received a response from either agency and requested that the SOTF instruct both departments provide the missing records.

Anonymous No. 1 stated that he has used the SOTF for decades and was denied records from the SFMTA. Anonymous No. 1 request for a file number from the SOTF was refused and noted that the SOTF Administrator does not decide whether or not to file a complaint.

David Steinberg, Public Works, responded to Mr. Hooper and stated that he has not responded to Mr. Hooper's most recent request because he is conferring with their Deputy City Attorney. Mr. Steinberg noted at the December 2, 2020, SOTF meeting that the Committee requested that Mr. Hooper provide a list of missing documents which were not previously requested. Mr. Steinberg stated that Public Works has released more than 800 documents to Mr. Hooper.

Anonymous No. 2 note that their comments is regarding some of those cases that will be heard at Compliance and Amendments Committee. Anonymous No. 2 referred to recent decisions in File Nos. 19103 and 19112 unanimously decided by SOTF. Anonymous No. 2 stated that the Mayor's Office has not responded because they have not received an Order of Determination.

At the hour of 6:17 PM the Chair requested that a short break be taken and then resume the remainder of the meeting at 6:27 p.m.

4. **File No. 19121:** Complaint filed by Anonymous against the Police Commission for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b)(k), 67.26 and 67.27, by failing to respond to a public records request in a timely and/or complete manner; failing to comply with the California Public Records Act, failing to keep withholding to a minimum, failing to key redactions by footnote or other clear reference to justification, and failing to cite legal justification for withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that on September 9, 2019, he made an Immediate Disclosure Request to the Police Commission for records related to Public Defender Jeff Adachi's death and the raid on Bryan Carmody. Anonymous stated that at the time Respondents withheld documents. Anonymous stated that at the Compliance and Amendments Committee the Chair said the Respondent did not key all of their redactions per 67.26. Anonymous contends that Administrative Code 67.27 states that the Police Commission should provide justification for redactions. Anonymous stated that he did not receive copies of the requested email records since Respondents provided copies of forwarded emails instead, which lack some information from the original record.

Sgt. Stacy Youngblood (Police Commission) (Respondent), that he had nothing to state and referenced the written response.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member LaHood, second by Member Schmidt, to find a violation of Administrative Code, Sections 67.21, 67.21(b), 67.26 and 67.27, by failing to provide responsive records, failing to provide a copy of the original records, failing to keep withholding to a minimum, failing to key redactions and failing to include written justification for withholding.

The SOTF recognized that the Police Commission has changed its process to identify problems with their records request processes and provided a solution.

Public Comment:

None

The motion PASSED by the following vote:

Ayes: 7 - LaHood, Schmidt, Yankee, Wong, Hyland, Hinze, Wolfe

Noes: 0 - None

5. **File No. 19058:** Complaint filed by Robert M. Smith against the Fine Arts Museum of San Francisco for violating Administrative Code (Sunshine Ordinance), Section 67.25, by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner.

Deputy City Attorney Marc Price Wolf (DCA Wolf) was requested by the SOTF to review the relationship between the Fine Arts Museum Foundation, FAMSF and CO-FAM and to describe how they are funded and to conclude which is a public entity and subject to the Sunshine Ordinance. DCA Wolf stated that FAMSF is a policy body and subject to Brown Act. DCA Wolf also stated that Co-FAM and the Foundation are not policy bodies under the Brown Act. Chair Wolfe proposed the question under what rules do CO-FAM and the Foundation have to comply with or do they comply with the terms of Administrative Code 67 or the terms of 12L? DCA Wolf's opinion is that they fall under 12L.

Chair Wolfe asked if Co-FAM and the Foundation are contracted by FAMSF?

DCA Wolf stated that his own research found that a contract does not exist.

Member Schmidt asked if the scope of memo included a couple of sub issues regarding the CPRA not Brown Act. Member Schmidt asked DCA Wolf about the Foundation and Co-FAM and did he consider if FAM itself had obligations under the CPRA to make an effort to effectuate the production of documents by those other two entities? Member Schmidt was asking what are the obligations of FAMSF when a public record request is presented?

DCA Wolf noted that FAMSF, CO-FAM, and the Foundation are three separate entities. If FAMSF has documents subject to a Public Records Act request, it has an obligation to turn them over. But FAMSF does not have an obligation to ask Co-FAM for their records. DCA Wolf noted that 12L does apply to CO-FAM and the Foundation.

Chair Wolfe noted that with regard to access of records, the Museum was required to provide records upfront. Chair Wolfe also noted that for records that are requested it is up to the agency to provide them and if requestor is not satisfied with agency's response, then they come to SOTF. Chair Wolfe noted that Mr. Smith was requesting documents from these entities and the entities denied and withheld that information saying that as a nonprofit they don't have to oblige. Chair Wolfe stated that as case proceeded it was found that the MOU wasn't clear about the relationship that the Museum had with the City.

Chair Wolfe noted on page 1 of Mr. Smith's request it states all documents relating in any fashion for records related to him in the Docent program. Who manages the Docent program? Chair Wolfe opined that if Co-FAM manages the Docent program, which is contracted by the City, all applications to be a Docent would be a public record.

DCA Wolf noted that if the request were sent to FAMSF, they would have to comply. DCA Wolf stated that if the request were made to CO-FAM they would have to follow the 12L requirement to produce.

Action: Moved by Member Yankee, seconded by Member Hinze, to require FAMSF disclose CO-FAM and FAMF records stored on City resources and/or communications systems with any reference to CO-FAM or **FAMF even if CO-FAM or **FAMF** created that record.**

Public Comment:

Anonymous noted that FAMSF's obligation does go beyond just producing their own records, based on the contractual language between the City and the contractor and commented regarding the importance of the email servers. Anonymous stated that when he first heard of the case, he sent a records request about FAMSF's use of CoFAM/FAMF's computer systems and did not receive documents from the Museum.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Schmidt, LaHood, Wong, Hyland, Hinze, Wolfe
Noes: 0 - None

6. **File No. 19119:** Complaint filed by Anonymous against the Department of Technology, Linda Gerull, Michael Makstman, and Arlene Licudine-Barker for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b), 67.26 and 67.27 by failing to respond to a public records request in a timely and/or complete manner, failing to keep withholding to a minimum, and failing to cite legal justification for withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he has received email and calendar ICS metadata information from Makstman and Gerull. Anonymous stated that in October 2020 some records were provided and that the Dept. of Technology has produced all requested emails and calendars metadata or agreed in writing to produce it.

Anonymous asked that the SOTF dismiss individual respondents and dismiss Administrative Codes 67.26 and 67.27 and ask for a 67.21(b) for an untimely production. Anonymous stated that these respondents have been helpful in City's production of metadata and there is nothing to further to argue.

Linda Gerull (Department of Technology) (Respondent), provided a summary of the department's position. Ms. Gerull thanked the SOTF for allowing her to be here tonight and that there was no need for the other respondents listed in the Complaint to attend. Ms. Gerull noted that there are no additional facts to add to this conversation and believe the matter is closed.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Hinze, seconded by Member Yankee, to find a violation by the Department of Technology of Administrative Code, Section 67.21(b) by failing to respond to a request for public records in a timely manner.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 7 - Hinze, Yankee, Schmidt, LaHood, Wong, Hyland, Wolfe
Noes: 0 - None

Action: Moved by Member Yankee, second by Member Hinze, to recognize the work of the Department of Technology and request that the they create a fact sheet addressing responding to metadata records requests of this nature and share with the SOTF.

Public Comment:
None.

The motion PASSED by the following vote:

Ayes: 7 - Yankee, Hinze, Schmidt, LaHood, Wong, Hyland, Wolfe
Noes: 0 - None

7. **File No. 19128:** Complaint filed by Anonymous against Chief William Scott, Sgt. Brian Rodriguez, Sgt. Michael Andraychak and the Police Department for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.25, 67.26, 67.27 and 67.29-7(a) by failing to respond to an Immediate Disclosure Request in a timely and/or complete manner, failing to comply with the California Public Records Act, failing to keep withholding to a minimum, failing to cite legal justification for withholding, and failing to preserve, maintain, and disclose all correspondence in a professional and businesslike manner.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that he sent an Immediate Disclosure Request to Sgt. Rodriguez for a specific email. Anonymous requested a specific email thread written by Sgt. Rodriguez on his rcfl.gov email account and that he was signed as a San Francisco Police Department officer. Anonymous also noted that he was told that Sgt. Rodriguez was participating in an investigation with the Silicon Valley regional Computer Forensics Laboratory (SVRCFL). Anonymous stated that instead of indicating whether records existed or a justification for withholding Respondents told Anonymous to request the records from the FBI. Anonymous stated that Sgt. Rodriguez is a City employee not an employee with the FBI and cited the SVRCFL MOU. Anonymous believes that this is a clear City of San Jose v. Superior Court of Santa Clara County., (cal.2017) case because the records are on Sgt. Rodriguez's other accounts. Anonymous stated that he has evidence that the record exists and that the Department is required to provide it.

Sgt. Michael Andraychak (Police Department) (Respondent), provided a summary of the department's position. Sgt Andraychak stated that the request was an Immediate Disclosure Request for emails by Sgt Rodriguez that was not routine. Sgt. Andraychak noted that Anonymous is a routine requestor and who knows there is a process that records requests be sent to the Custodian. Sgt. Andraychak stated that there are records requested by Anonymous and identified by Sgt. Rodriguez that they are not turning them over because there is an ongoing open criminal investigation and cited Gov. Code 6254(f). Sgt. Andraychak stated that the Department is willing to provide emails, that were requested by another requestor that they are willing to provide again. Sgt. Andraychak cited the SVRCFL MOU regarding FBI records

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Yankee, second by Member Hinze to find a violation of Administrative Code, Sections 67.26 and 67.27 by failing to keep withholdings to minimum and failing to provide justification for withholding.

Member Yankee rescinded his motion.

Chair Wolfe noted that Anonymous is asking for the entire email thread not just the single email. Chair Wolfe stated that Anonymous is asking that part of the emails produced and delivered to the requestor with the entire metadata. Chair Wolfe stated that Anonymous wants the entire email string sent to Lt. Torres.

Member Schmidt stated that Sgt. Andraychak is the person most knowledgeable to report on this matter on behalf of the Police Department.

Action: Moved by Chair Wolfe, second by Member Wong, to find a violation of Administrative Code, Sections 67.26 and 67.27, by failing to keep withholdings to a minimum and failing to provide justification for withholding. In addition, the SOTF ordered the production of all emails in that discussion thread under the subject line of 190149152/Carmody/SVRCFL Lab#SV-19-0033.

Public Comment:

None.

The motion PASSED by the following vote:

Ayes: 6 - Wolfe, Wong, Yankee, Hinze, LaHood, Hyland

Noes: 1 - Schmidt

Chair Wolfe disagreed with Member Schmidt and moved that the Police Department did not send a personal most knowledgeable to the hearing.

Action: Moved by Chair Wolfe, second by Member Hyland, to find a violation of Administrative Code, Section 67.21(e), for not sending a knowledgeable representative to the hearing.

Public Comment:

None.

The motion FAILED by the following vote:

Ayes: 4 - Wolfe, Hyland, LaHood, Wong

Noes: 3 - Schmidt, Yankee, Hinze

Absent: 0 - None

8. **File No. 19097:** Complaint filed by Anonymous against Mohammed Nuru, Jeremy Spitz and Public Works for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21, 67.26 and 67.27, by failing to respond to a public records request in a timely and/or complete manner, failing to keep withholding to a minimum, failing to key redactions by footnote or other clear reference to justification, and failing to cite legal justification for withholding.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that this request was made in August 2019 for the 10 emails of various senior management of Public Works. In October 2020, David Steinberg of Public Works began producing emails and then halted responses to this request and it was unclear why. Anonymous stated that the requested information was not initially provided but Public Works has since been correcting their procedures and have been disclosing email headers. Anonymous stated that the response was untimely and requested that the SOTF find a violation of 67.26 for nonminimally withholding and 67.27 for withholding without justification because Public Works also did not provide images, hyperlinks, urls and to, from, cc, and bcc email addresses

David Steinberg (Public Works) (Respondent), provided a summary of the department's position. Mr. Steinberg stated that Anonymous mischaracterized their response. Mr. Steinberg stated that at the time of the request he was out of the country. Mr. Steinberg stated the request was in a format that was not easily available. Mr. Steinberg stated that he did not know how to provide emails with metadata and requested assistance from Public

Works IT Department. Mr. Steinberg stated that it took more than one year to get the technology to redact security information. Mr. Steinberg stated the original requested was closed and then reopened once they had the ability to redact and provide records by Public Works IT Department. Mr. Steinberg stated that providing responsive records was suspended pending advice from IT and the City Attorney's Office. Mr. Steinberg asked the SOTF find no violation.

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Yankee, second by Member LaHood, to find that Mohammed Nuru, Jeremy Spitz and Public Works violated Administrative Code, Section 67.26, by failing to keep withholding to a minimum for images, hyperlink, urls, and email addresses and ordered Public Works to coordinate with the Department of Technology to turn over the remainder of email headers to the Petitioner within 60 days. The matter was referred to the Compliance and Amendments Committee to report the status of the disclosure.

Public Comment:

None

The motion PASSED by the following vote:

Ayes: 7 - Yankee, LaHood, Hinze, Schmidt, Wong, Hyland, Wolfe

Noes: 0 - None

9. **File No. 19120:** Complaint filed by Anonymous against the Office of the City Attorney for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.21(b)(c), 67.26, 67.27, by failing to respond to a public records request in a timely and/or complete manner, failing to keep withholding to a minimum, failing to key redactions by footnote or other clear reference to justification, failing to cite legal justification for withholding, and failing to provide a written statement of nature, form, existence, and quantity of records.

Anonymous (Petitioner) provided a summary of the complaint and requested the Committee to find a violation. Anonymous stated that the respondent must provide a written justification for withholdings and redactions per Administrative Code, Section 67.27. Anonymous stated that he narrowed their search terms. Anonymous stated that he does not care about timeliness and only wants a list of written justifications and redaction key. Anonymous stated that after challenging some redactions Respondent cited more justifications after the complaint was filed. Anonymous noted that in court cases a privilege log is produced so by analogy Respondents should provide a quantity of privileged records under 67.21(c) even if their content may be exempt, and that responses for large requests should be provided on a rolling basis. Anonymous discussed Respondent's citations of L.A. County Board of Supervisors v. Superior Court of LA County (cal..2016) and St. Croix v. Superior Court (Cal. Ct. App 2014).

John Cote (City Attorney's Office) (Respondent), provided a summary of the department's position. Mr. Cote stated that he was pleased that Anonymous

acknowledges that timeliness issue is not important. Mr. Cote noted that this request involved 16 people in the office and records regarding deceased Public Defender Jeff Adachi including post it notes, subpoenas and other materials that are often seen in public records requests. Mr. Cote stated that his office had already produced 2000 pages of records which were complex in nature, and on November 26, 2019, page 1635 of packet provided detailed responses explaining why redactions are provided. Mr. Cote opined that the law is clear and states that a response cannot abrogate attorney client privilege. Mr. Cote noted that the attorney/client privilege does not just include the substance of advice or when the City Attorney actually provides that advice and also includes the amount of privileged communications. Mr. Cote cited *LA County Board of Supervisors v. Superior Court of LA. County.* (Cal 2016) and *St. Croix v. Superior Court* (Cal. Ct. App. 2014).

A question and answer period occurred. The parties were provided an opportunity for rebuttals.

Action: Moved by Member Schmidt, second by Member Yankee, to find that the Office of the City Attorney violated Administrative Code, Sections 67.26 and 67.27, by failing to provide a key to redactions and failing to provide written justifications for withholding.

Public Comment:

David Pilpel asked a specific question about Item 10 in the Agenda.

The motion PASSED by the following vote:

Ayes: 7 - Schmidt, Yankee, LaHood, Hinze, Wong, Hyland, Wolfe
Noes: 0 - None

10. **Recommendations from the Complaint Committee regarding existing New Compliant Form and a revised Complaint Form submitted by the SOTF Administrator and another by a Petitioner.**

Member Hinze provide a summary of the process to revise the SOTF Complaint Form.

SOTF administration staff Victor Young provide a summary of propose amendment to the complaint form listed in the agenda packet.

Chair Wolfe stated that the SOTF has an obligation to educate the public on what the custodian is and that it is important for people to know the nomenclature.

Member Hinze suggested keeping the language regarding retention policies.

Chair Wolfe stated that the verbiage in the third section from last one is not correct. If the Custodian said that the record is exempt under CPRA and under Sunshine that should be noted. Chair Wolfe also noted that there is no section for public meetings. Chair Wolfe stated that this discussion should be continued at the February SOTF meeting or possibly bring up at the Orientation after the nominations.

Public Comment:

David Pilpel noted that this was a good discussion. Mr. Pilpel stated that the revisions to the form outlined by Mr. Young are good and the instruction page is helpful. Mr. Pilpel stated that the Administrator's efforts to merge the narrative of the pieces was clear. Mr. Pilpel suggested that the section on how to file a complaint should be a separate form. Mr. Pilpel stated that it is helpful for those people who choose to use it because can be intimidating and suggests things that are not always relevant.

Anonymous reminded the SOTF that his motivation for drafting this form was because some people were not clear on what their rights or responsibilities are. Anonymous agreed with previous commenter that this not be a requirement.

11. **Report from Sunshine Task Force Vice-Chair Yankee on the letter sent relating to Files Nos. 19048 and 19092.**

Member Yankee stated that the SOTF received a response from Ed Poole of the Zoological Society and that the Zoological Society does not intend to comply with the Order of Determination. Member Yankee suggested referring the matter to the Ethics Commission.

Chair Wolfe stated that the SOTF review 67.21(f) and that this is a good case for this issue.

Member Yankee suggested that the SOTF turn this case over to the Superior Court because Ethics may not have jurisdiction.

Member Schmidt stated that this matter would end up in their garbage can. Member Schmidt stated that the Court has no interest, would not know what this is in regards to. Member Schmidt noted that the Superior Court takes lawsuits, they don't take administrative referrals or do anything with them.

Chair Wolfe opined that a member of the public takes their ODs to court could possibly find a remedy.

Member Yankee noted that this is a complicated matter on how to enforce Orders of Determination and probably deserves further discussion at Compliance and Amendments or the SOTF Orientation. Member Yankee asked that this matter be agendized and for a later discussion.

Public Comment:

David Pilpel stated that he did not hear the Zoo case, however this is not a new issue and proceeds the first meeting. Mr. Pilpel noted that the Zoo Lease was put together at the same time the Ordinance was written. Mr. Pilpel stated that the Joint Zoo Committee was created for a separate purpose. Mr. Pilpel noted that it might be useful to ask the City Attorney to chime in. Mr. Pilpel also suggested

that it might be helpful go to Jim Lazarus who was the Executive Director and may recall what the understanding was of this particular section.

No actions taken.

12. **Sunshine Ordinance Task Force - Chair's Report. Discussion regarding City Attorney Memos.**

This matter was continued to the Call of the Chair without objection.

13. **Administrator's Report, Complaints and Communications.**

SOTF Administrator Cheryl Leger presented the Administrator's Report to the Committee.

Administrator Victor Young stated that the next Rules Committee meeting of January 11, 2021, will consider SOTF appointments and if heard those appointments will become effective on January 20, 2021, pending Oath of Office and paperwork.

No actions taken.

14. **Announcements, Comments, Questions, and Future Agenda Items by Members of the Sunshine Ordinance Task Force.**

Chair Wolfe paid commendations to Fiona Hinze and wished her well at the SFMTA and thank you from the SOTF.

Public Comment:

David Pilpel agreed that Member Hinze is fantastic.

15. **ADJOURNMENT.**

There being no further business the meeting was adjourned at 11:34 p.m.

APPROVED: 3/3/21
Sunshine Ordinance Task Force

N.B. The Minutes of this meeting set forth all actions taken by the Sunshine Ordinance Task Force on the matters stated, but not necessarily in the chronological sequence in which the matters were taken up.